

State tax exemptions

Legal information for Victorian community organisations

This fact sheet covers:

- ▶ state duties and exemptions
 - ▶ payroll tax and exemptions
 - ▶ land tax and exemptions, and
 - ▶ other taxes.
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In addition to the various taxes that are imposed on community organisations by the Federal Government, Victorian groups may also be subject to state taxes. In Victoria, the main government agency that is responsible for state taxes is called the State Revenue Office (SRO).

We recommend that your organisation seek advice on its state tax obligations. This fact sheet sets out a brief description of some of the main state taxes and the exemptions or concessions that may be available for some community organisations.

Duties ('stamp duty')

What are duties?

Duties (or stamp duties) are taxes that the Victorian government charges on certain transactions, known as dutiable transactions. The legislation in which these duties are set out is called the *Duties Act 2000* (Vic) (**Duties Act**). The most commonly known transaction that duty is charged on is the transfer of land. However, duties are also charged on other dealings in land, declarations of trust over property, registration and transfer of a motor vehicles, certain leasing transactions, as well as on other transactions.

In general, incorporated, not-for-profit community organisations will be liable to pay duties, in accordance with the Duties Act, in the same way that any other organisation or individual is required to, unless they qualify and have applied for an exemption.

Are there any exemptions from duties available for not-for-profit community organisations?

In general, only community organisations that are 'charitable organisations' under Victorian law are eligible for exemptions from some of the duties imposed under the Duties Act. In general, charitable organisations are exempt from paying any duty on the following transactions (where they would normally attract a duty):

- transfer of property (e.g. land) to a corporation or body of persons established for a charitable purpose or a friendly society

- a declaration of trust over property to be held on trust solely for a religious charitable or educational purpose
- declaration of trust over non-dutiable or non-identified property to be held on trust for a charitable purpose, and
- application for registration or transfer of registration of a vehicle in the name of a charitable, benevolent or religious institution used to convey incapacitated persons.

There are also some limited duty exemptions set out in other legislation. For example, *the Associations Incorporation Reform Act 2012* (Vic) (**AIR Act**) provides certain exemptions from 'duty' in relation to 'transfers' of real property or interests in real property when a group incorporates as an association (i.e. property of the unincorporated group or other type of incorporated entity will transfer to the ownership of the association) or when two or more incorporated associations amalgamate under the AIR Act.

What does our organisation have to do to access an exemption?

The SRO no longer issues Certificates of Exemption.

To qualify for an exemption from stamp duties (and also payroll tax and land tax), it is not sufficient simply to be a registered charity with the ACNC. Since there is no definition of "charitable" in the Duties Act, your organisation will have to apply for the exemption to the SRO, and provide documentation to prove its charitable status under Victorian law (including governing rules or constitution and other supporting documents explaining the objects of the organisation). You will need to satisfy the Commissioner of State Revenue (the Commissioner) that the purpose of the organisation is for the relief of poverty, advancement of education or religion or for other purposes beneficial to the community *and* that the purpose is for the benefit of the public in general or an appreciable section of it. The purpose of the organisation and its actual activities will be considered.

Applications should be made on-line after a dutiable transaction is completed. You can seek advice from the SRO regarding your charitable status if you are unsure. We have included a link to the Application Form in the Resources section below.

CAUTION

State tax laws are not linked to federal tax laws, and the SRO applies a state definition of 'charity' and 'charitable', so your organisation may need advice to make sure that it meets both state and federal requirements.

In general, there may be some organisations that are considered a charity under the federal definition contained in the *Charities Act 2013* (Cth) that may not meet the definition of charity under Victorian law.



Payroll tax

What is payroll tax?

Payroll tax is a self-assessed tax that the Victorian government charges on 'taxable wages' paid or payable by an employer to its employees and deemed employees. The tax is calculated as a percentage of "wages". Wages is defined very broadly and includes wages, remuneration salaries, commissions, bonuses, allowances, employer superannuation contributions, fringe benefits,

remuneration payments, etc. The legislation in which this tax is set out is called the *Payroll Tax Act 2007* (Vic) (**Payroll Tax Act**).

All Australian states and territories have participated in the payroll tax harmonisation program which is designed to align the payroll tax provisions in a number of key areas including cross border workers, grouping of businesses and timing for lodgement of returns. Jurisdictional differences still apply on other aspects including in respect of available exemptions.

Unless exempt, not-for-profit community organisations that employ people in Victoria will be required to pay payroll tax if the amount they pay in employee wages exceeds the 'threshold amount' set by the Victorian government. The Payroll Tax Act does not define precisely who is an 'employee' but does extend the concept to include. For example, some workers that your organisation may consider to be a 'contractor' for the purposes of other legislation.

For more information about payroll tax, see the Resources section below.

Are there any exemptions from payroll tax available for not-for-profit community organisations?

Wages will be exempt from payroll tax if the Commissioner is satisfied that the wages are paid or payable to a person who is engaged exclusively in work of a religious, charitable, benevolent, philanthropic or patriotic nature for the institution or non-profit organisation, by any of the following:

- a religious institution
- a public benevolent institution (but not including an instrumentality of the State), or
- a non-profit organisation having its whole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose (but not including a school, an educational institution, an educational company or an instrumentality of the State).

Despite being registered as a charity with the ACNC, not all wages paid by the organisation will be eligible to be exempt from payroll tax. The exemption is only applicable to the wages paid by charitable organisations to persons engaged exclusively in work performed in connection with the charitable activities of the organisation (i.e. payments made to persons engaged in the commercial activities of the charitable organisation will still be subject to payroll tax).

We have included in the Resources section below a link to a Payroll Tax Bulletin published by the SRO in relation to exempt wages for non-profit organisations and religious and public benevolent institutions. This bulletin contains examples of wages paid by charitable organisations that will be exempt from payroll tax.

How does our organisation access the exemption?

If you think your organisation may be eligible for an exemption from paying payroll tax, you should contact the SRO. To apply for an exemption you may do this on-line or you may make a written application to the SRO (there is no prescribed form), together with any supporting documents (for example, your constitution, memorandum of association, brochures or any other document which states the purpose of your organisation). You may need assistance of a lawyer to make the application.

Land tax

What is land tax?

Land tax is a tax that the Victorian government imposes on the 'total taxable value' of land owned by the organisation in Victoria. The legislation which imposes the tax is called the *Land Tax Act 2005* (Vic).

In general, charitable and some community organisations that own land which is subject to the tax will be liable to pay the tax, unless they qualify for an exemption or concession.

Are there any exemptions from land tax or concessions available for not-for-profit community organisations?

An exemption from land tax means an organisation does not have to pay any tax for the land covered by the exception. Exemptions from land tax are available in some circumstances for:

- charitable organisations (although only when the land is owned and used exclusively for charitable purposes or leased in a certain way), and
- organisations that provide or promote sporting, outdoor recreation or outdoor cultural activities (although they must be not-for-profit organisation and some conditions apply).

There is provision to apportion the tax liability when the land is partly used for charitable purposes.

Even if an exemption does not apply, a not-for-profit organisation may be entitled to a concessional rate of tax. A concession from land tax means an organisation pays a lower rate of tax for land on which they must pay land tax. A concessional rate may apply where land is owned and solely occupied by a club or association that is carried on exclusively to provide for the social, cultural, recreational, literary or educational interests of its members, or for the promotion or control of horse, pony or harness racing in Victoria, and it not carried on for the purpose of profit or gain to its members.

How does our organisation access the exemption or concession?

If you believe that your community organisation may be eligible for a land tax exemption or a concessional rate, you should contact the SRO. You will need to lodge a written application (there is no prescribed form), together with supporting documents (such as financial statements and promotional material evidencing the services provided and activities undertaken by your organisation). We have included a link to the application process in the Resources section below.

If your organisation has received a land tax assessment notice and believes it is entitled to an exemption from the tax or a concessional rate, you need to formally object to the assessment notice (on the basis that you believe the land assessed is exempt). Your organisation must object to a land tax assessment notice within 60 days from which the assessment notice was served.

Other taxes

Duties, payroll and land tax are three of the main taxes that the Victorian government levies. There may be other state taxes that apply to not-for-profit community organisations such as the congestion levy, which is a tax on car parking spaces in a certain area in Melbourne).

To find out more about state taxes and whether your organisation may be eligible for any exemptions or concessions, go to the SRO website which has been listed in the Resources section below.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub (www.nfplaw.org.au) has further resources on the following topics:

✔ Getting started – www.nfplaw.org.au/gettingstarted

Not-for-profit Law's Getting Started page on the Information Hub has information on incorporating and choosing a legal structure.

✔ Tax – www.nfplaw.org.au/tax

Not-for-profit Law's Tax page on the Information Hub has information Federal tax laws and concessions and exemptions for charities and not-for-profits.

Legislation

✔ [Associations Incorporation Reform Act 2012 \(Vic\)](#)

✔ [Duties Act 2000 \(Vic\)](#)

✔ [Payroll Tax Act 2007 \(Vic\)](#)

✔ [Land Tax Act 2005 \(Vic\)](#)

Related Resources

✔ [State Revenue Office Victoria](#)

✔ [Duties - Charities and Friendly Societies Duty Exemption](#)

✔ [Duties - Apply for a duty exemption for charities and friendly societies](#)

✔ [Payroll Tax Bulletin - Publication PTX 2/12 - Exemptions for wages paid by non-profit organisations and religious and public benevolent institutions](#)

✔ [Land Tax - Apply for a charitable land tax exemption](#)

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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